

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jan Thronkson,
Complainant,
vs.
Fairway Outdoor Advertising,
Respondent.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
PREHEARING CONFERENCE**

TO: Complainant Jan Thronkson and Respondent Fairway Outdoor Advertising.

On December 12, 2012, Jan Thronkson filed a Campaign Complaint with the Office of Administrative Hearings alleging that Fairway Outdoor Advertising violated Minnesota Statutes § 211B.05, subd. 2 (advertising rates) in connection with electronic billboards they leased to the Thronkson campaign and the Hanson campaign in the race for Rochester City Council President in November of 2012.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.05. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a telephone scheduling conference to be held by telephone before the undersigned Administrative Law Judge at **1:30 p.m. on Tuesday, January 22, 2013**. The scheduling conference will be conducted by telephone conference call. At the appointed time, you must call: **1-888-742-5095**. When the system asks for your numeric pass code, enter **249 440 7275#** on your phone and you will be connected to the conference.

At the prehearing conference, preliminary matters will be addressed such as identifying the issues to be resolved, the number of potential witnesses and exhibits should the matter proceed to hearing, possible dates for the hearing, and determining whether the matter may be disposed of without an evidentiary hearing.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any

party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: December 19, 2012

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

Complainant Jan Thronson was a candidate for Rochester City Council President in the November 6, 2012, general election. The Respondent, Fairway Outdoor Advertising, leased electronic billboards to Mr. Thronson's campaign, as well as, to his opponent, Mr. Hanson.

The Complaint alleges the Respondent charged Mr. Thronson a higher rate to lease the electronic billboards than it did his opponent.

Legal Standard

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.¹ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.² A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.³

Minnesota Statutes § 211B.05, subd. 2, Advertising Rates

Minnesota Statutes 211B.05, subd 2 provides, as follows:

Rates charged for advertising to support or oppose a candidate or ballot question must be the same as the charges made for any other political candidate and may be no greater than charges for any other comparable purpose or use according to the seller's rate schedule.

¹ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

² *Id.*

³ *Id.*

The Complaint alleges the Respondent charged the Thronson campaign \$1,800 for the use of an electronic billboard for four weeks. The Complaint goes on to allege the Respondent charged Mr. Thronson's opponent \$1,700 for the use of an electronic billboard for five weeks. The Complaint has alleged sufficient facts to support the allegation the Respondent charged the two campaigns different rates for the use of electronic billboards in violation of the law. The Administrative Law Judge concludes that the Complaint has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.05, subd. 2.

This matter will proceed to a prehearing conference on the alleged violation of Minn. Stat. § 211B.05, subd. 2 as indicated in this Order.

J. E. L.